

## **REMARKS**

The Office Action mailed October 28, 2003 has been received and the Examiner's comments carefully reviewed. Claims 41-47 have been added. No new subject matter has been added. Claims 22-47 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

### **Rejections Under 35 U.S.C. §103**

I. The Examiner rejected claims 22, 25, 26 and 28-40 under 35 U.S.C. §103(a) as being unpatentable over Ierulli (U.S. Patent 6,453,901) in view of Muchin (U.S. Patent 5,718,224) and either Heinecke (U.S. Patent 5,088,483) or Faasse (U.S. Patent 4,744,355). Applicants respectfully traverse this rejection.

The Examiner rejected the above claims stating that it would have been obvious to use a 3-piece liner in order to selectively uncover the central region of Ierulli's dilator because Muchin discloses "that it was known to apply the central portion of the dilator to the nose first before the lateral side portions." Applicants ask that the Examiner please provide the particular text of Muchin that discloses it was known to apply the central portion of the dilator first before the lateral side portions. In review of Muchin, it appears Muchin discloses only that the dilator adheres to the skin of the nose, and is silent as to which portions of the dilator are applied first. Accordingly, Applicants submit that the Examiner's basis for this rejection is flawed.

Further, the Examiner asserts that providing at least three release liners portions instead of the two disclosed in Ierulli is nothing more than a mere duplication of known parts. The Examiner also provided case law stating that mere duplication has no patentable significance unless a new and unexpected result is produced. The Examiner stated that removing a center liner to keep lateral portions covered and clean before attaching to the sides of the nose would not be unexpected. Applicants respectfully traverse this assertion.

Applicants submit that the result provided by the present claims includes exposing the intermediate portion to aid in centering or aligning the intermediate portion of the support device at a midregion over the nasal passages. In contrast, both Muchin and Ierulli

teach using a narrowed center sections to align the device, rather than a removable central release liner portion.

At least because a proper basis for this rejection has not been established, and the multiple-piece release liner is not a mere duplication of part without patentable meaning, Applicants respectfully submit that claims 22, 25, 26 and 28-40 are patentable.

II. The Examiner also rejected claims 22 and 31-33 under 35 U.S.C. §103(a) as being unpatentable over Muchin (U.S. Patent 5,718,224) in view of either Heinecke (U.S. Patent 5,088,483) or Faasse (U.S. Patent 4,744,355). Applicants respectfully traverse this rejection.

At least for similar reasons as discussed above with regards to Muchin, Applicants respectfully submit that claims 22 and 31-33 are patentable.

#### **Double Patenting**

The Examiner rejected claims 34-36 under the judicially created doctrine of obviousness-type double patenting over claim 3 of U.S. Patent No. 6,352,548. Applicants respectfully traverse this rejection. Without acquiescing to this rejection, a terminal disclaimer of the term extending beyond the term of U.S. Patent 6,352,548 has been filed herewith to obviate this rejection.

#### **Allowable Subject Matter**

The Examiner objected to claims 23, 24 and 27, but indicated that claims 23, 24 and 27 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

Objected-to claim 23 has been rewritten in independent form as new claim 41. The allowable subject matter of objected-to claim 23 has also been incorporated into base claim 34, and rewritten as new claim 42. Applicants respectfully submit that claims 41 and 42, which contain subject matter indicated as allowable, are now in condition for allowance.

Objected-to claim 27, and intervening claims 26 and 25, has been rewritten in independent form as new claim 43. Applicants respectfully submit that claim 43 is now in condition for allowance.

#### **New Claims 41-47**

##### **I. Claims 41-43**

As discussed above, new claims 41-43 each incorporate subject matter indicated as allowable by the Examiner. Applicants respectfully submit that claims 41-43 are patentable.

##### **II. Claims 44 and 45**

Claim 44 depends upon claim 22. Claim 45 depends upon claim 34. Support for claims 44 and 45 is found, for example, in Figure 3. At least for the reasons as discussed with regards to independent claims 22 and 34, Applicants respectfully submit that 44 and 45 are patentable.

##### **III. Claim 46**

New claim 46 recites a method for supporting tissues overlying first and second nasal passages. The method includes removing an intermediate piece of the release liner from a support device to expose a center portion of an engaging layer and centering the exposed center portion over the nasal passages. The method also includes determining an alignment of the support device by aligning the exposed center portion with respect to a midregion such that the exposed center portion is centered between the first and second nasal passages.

Support for claim 46 is found in the specification. For example, Figure 3 shows removal of the first intermediate piece exposes a center portion. The specification further states, for example, that the release liner can comprise on or more sections which can be selectively removed from the engagement layer to facilitate positioning. Page 13, lines 16-19. That is, the intermediate piece can be removed first and the midline region of adhesive of the engagement layer engaged to the skin over the nasal bones. Once the

proper position is determined, the remainder of the device is secured. Page 20, lines 14-22.

None of the cited art discloses providing a three-piece release liner, exposing a center portion of an engaging layer by removing an intermediate piece of the three-piece liner, and using or determining the alignment of the support device by way of the exposed center portion. Applicants therefore respectfully submit that claim 46 is patentable.

#### IV. Claim 47

New claim 47 recites a device for supporting tissues overlying first and second nasal passages. The device includes a release liner including a first removable intermediate piece, a second removable lateral piece and a third removable lateral piece. Removal of the first intermediate piece exposes a lift member's midregion for positioning the device at a central alignment with respect to the first and second nasal passages.

Support for claim 47 is found in the specification. For example, Figure 3 shows removal of the first intermediate piece exposes a lift member's midregion. The specification further states, for example, that the release liner can comprise on or more sections which can be selectively removed from the engagement layer to facilitate positioning. Page 13, lines 16-19.

None of the cited art discloses a release liner configured such that removal of the first intermediate piece exposes a lift member's midregion for positioning the device at a central alignment with respect to the first and second nasal passages. Applicants therefore respectfully submit that claim 47 is patentable.

### SUMMARY

It is respectfully submitted that each of the presently pending claims is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.


Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.



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Respectfully submitted,

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